

Service Date: August 1, 1997

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Request of	)	UTILITY DIVISION
MONTANA POWER COMPANY	)	
for Approval of the Electric	)	DOCKET NO. D97.2.29
Market Based Rate Schedule MBR-1.	)	ORDER NO. 5972a

**PROTECTIVE ORDER**

**BACKGROUND**

The Montana Public Service Commission (PSC or Commission) took evidence on June 24, 1997 on a presentation by Montana Power Company (MPC) and Montana Consumer Counsel (MCC) of their Stipulation Agreement on MPC's proposed Schedule No. GS-Express-1 (GS-Express-1) to provide electric service to Express Pipeline Partnership (Express). In MPC's original application, MPC proposed a generic Market Based Rate Schedule MBR-1 for customers with average annual loads over 1 MW. As stipulated, the Parties agreed to limit and rename the tariff, GS-Express-1, to apply only to Express and to be in effect until July 1, 1998, after which time MPC would serve Express pursuant to the market-based rate schedule resulting from the restructuring Docket No. D97.7.90.

At the Stipulation presentation, MPC agreed to provide as a late-filed exhibit a copy of the contract between MPC and Express. On July 22, 1997 the Commission received a Motion for Protective Order from MPC, seeking to limit access and use of the following proprietary and confidential information submitted by MPC to support its Express Pipeline tariff filing, GS-Express-1: (1) Copy of the agreement for electric services between MPC and Express referred to in the Stipulation; and (2) An explanation of the basis for the rates for electric services set out in the agreement in comparison to the GS-2 rate. The primary information MPC wishes to protect includes pricing information that MPC believes is market sensitive in that it reveals the contract terms for electric service MPC will charge to Express.

MPC maintains that this Express price information is "trade secret," pursuant to §§ 69-3-105(2) and 30-14-402(4), MCA, in that the information (1) is not known outside MPC's or Express's business; (2) dissemination of the information is limited, even within MPC; (3) MPC has taken stringent precautions to preserve the confidentiality of this contract information, including limiting access to the contract and maintaining a limited number of copies of the contract in house; (4) the value to MPC in keeping this information secret from competitors is significant and disclosure would cause MPC irreparable harm and irreversibly affect MPC's ability to compete with others for future business; and (5) given the strict secrecy of the negotiations, the terms of the contract could not be acquired or duplicated without forced disclosure.

#### ORDER

IT IS ORDERED that this Protective Order, covering the material and information described by MPC in its Motion shall be in effect, unless there is a Commission or MPC decision that the information need not remain protected, as provided in this Order.

1. (a) Confidential Information. The pricing information requested by the Commission relative to the MPC-Express Agreement shall be deemed confidential. All persons accorded access under this Order shall treat this trade secret, confidential or privileged pricing information as confidential (referred to as "Confidential Information"). Confidential Information shall not be used nor disclosed except solely in accordance with this Order. MPC shall mark or stamp the Confidential Information with a designation indicating its trade secret, proprietary or confidential nature, and submit this Confidential Information to the Commission on yellow paper for identification for filing purposes.

(b) Nondisclosure Agreement. Confidential Information shall not be disclosed to any person who has not signed a nondisclosure agreement form incorporated herein as Exhibit "A." Court reporters shall also sign an Exhibit "A." Exhibit "A" requires the persons obtaining disclosure first to read a copy of this Protective Order and certify in writing that they have reviewed the Order and consented to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, or, if the signatory is an independent

contractor or consultant, the name of the entity for whom the signatory is working. The agreement shall be delivered to the Commission, which shall then provide a copy of the agreement to MPC. MPC shall have twenty (20) days from the date an individual requests to see the Confidential Information and signs an Exhibit "A" to file an objection with the Commission. The Commission shall not disclose the Confidential Information until the twenty (20) day period has expired and MPC has not filed an objection.

2. (a) Challenge to Individual's Review. This Order establishes a procedure to expedite handling of MPC's objection to individual requests to review Confidential Information..

(b) Commission Procedure. On receipt of MPC's objection, the Commission shall resolve the issue promptly. The Commission shall encourage MPC and the requesting party to informally resolve the challenge. If the parties are unable to reach agreement, the Commission shall decide the issue. The Commission shall conduct any proceedings in camera to protect the Confidential Information. The record of in camera hearings shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER, Montana Power Company's Rate Schedule No. GS-Express-1," and transcribed only on agreement of the parties or Order of the Commission. If transcribed, the record shall be separately bound, segregated, sealed, and withheld from inspection by any person not authorized disclosure under this Order. There may be no release from the restrictions of this Order without either an agreement of the parties or an Order of the Commission, after notice to the parties and a hearing.

3. (a) Use in Decisions and Orders. When practicable, the Commission will refer to Confidential Information in only a general form and will avoid reproduction in any decision of Confidential Information. If it is necessary to discuss Confidential Information other than in a general form, the discussion with this protected information shall be placed in a separate section of the Order or Decision under seal.

(b) Summary for Record. When filing material with the Commission pursuant to this order, MPC shall concurrently file a brief non-proprietary written summary of the Proprietary Information. In other instances, if deemed necessary by the Commission, MPC shall prepare a written summary of the Proprietary Information referred to in a decision or order to be placed on the public record.

4. Segregation of Files. All Confidential Information filed with the Commission will be sealed by the Commission, segregated and withheld from inspection by any person not bound by the terms of this Order. Confidential Information may be released from the restrictions of this Order by agreement of the parties or, after notice and hearing, pursuant to an Order of the Commission or final order of a Court having jurisdiction. The Consumer Counsel may retain all written Confidential Information obtained under this order, but shall withhold it from inspection by others, except for Consumer Counsel staff and counsel, unless it is released by the Public Service Commission and/or a final order of a court under this paragraph, subject always to the terms of confidentiality in this Order.

5. Preservation of Confidentiality. All persons receiving access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than to prepare for and conduct this proceeding as provided in this Order, and shall take reasonable precautions to keep the Confidential Information secure, pursuant to this Order.

6. Amendment or Modification. The Commission retains jurisdiction of this matter and may alter or amend these provisions, upon motion by an appropriate party and reasonable notice.

DONE AND DATED this 29th day of July, 1997 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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DANNY OBERG, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

EXHIBIT "A"

I have reviewed the foregoing Protective Order in MPC Docket No. D97.2.29, dated July 29, 1997, and agree to be bound by the terms and conditions of such order.

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Signature

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Typed or Printed Name

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Employer or Firm

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Business Address

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Party

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Date